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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,478	02/10/2004	Michael Kreindel	KREINDEL4A	8926
1444	7590	08/17/2006	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			PEFFLEY, MICHAEL F	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,478

Applicant(s)

KREINDEL, MICHAEL

Examiner

Michael Peffley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6 and 9-14 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 7, 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Applicant's amendments and comments, received June 15, 2006, have been fully considered by the examiner. The following is a complete response to the June 15, 2006 communication.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1, 4-6 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ingle et al (6,139,569).

Ingle et al disclose a device for providing heating and cooling to a tissue surface. In particular, Figure 5 shows a device having a plate with a plurality of electrodes distributed on the plate. A cooling fluid passes through the plate to create a series of heating and cooling areas on the plate (see abstract). The specification indicates that the cooled sections are much cooler than the heated sections (col. 7, line 60 through col. 8, line 20). Ingle et al teach the preferred use of the apparatus is for treating incontinence, but also specifically teach the use of the device to treat wrinkles in skin tissue (col. 5, lines 15+). The Ingle et al reference clearly teaches cooling a tissue surface surrounding a surface targeted for treatment with the RF electrodes.

Claim Rejections - 35 USC § 103

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ingle et al ('569) in view of the teaching of Stern (6,413,255).

The Ingle et al device has been addressed previously. Ingle et al disclose cooling a tissue surface while heating the tissue surface, but fails to specifically disclose

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providing the cooling step prior to delivering RF energy. The examiner maintains that providing the cooling step prior to, during and/or after energy delivery would be an obvious consideration for one of ordinary skill in the art to provide the necessary protection of tissue. Stern et al disclose an analogous tissue treatment device that provides cooling of skin tissue. In particular, Stern et al teach that the cooling may be provide before, during and/or after delivery of RF energy as desired to protect non-targeted tissue.

To have provided the Ingle et al device with a controller to provide cooling at any time during the procedure to provide adequate protection of the non-targeted tissue would have been an obvious modification for one of ordinary skill in the art in view of the teaching of Stern et al.

Allowable Subject Matter

Claims 2, 3, 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art fails to disclose a temperature effector that heats non-targeted tissue as set forth in these claims. Applicant's arguments with respect to the Shadduck et al reference are deemed persuasive, particularly in that Shadduck et al clearly target deeper seated tissue and the wavelengths used would be ineffective to change the temperature of surface tissue.

Response to Arguments

Applicant's arguments with respect to claims 1, 4-6 and 9-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

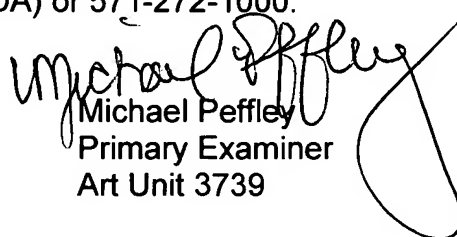
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Michael Peffley
Primary Examiner
Art Unit 3739

mp
August 14, 2006